

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINTS NOS. 01-11-90046, 01-11-90047, 01-11-90048, AND 01-11-90051

BEFORE
Lynch, Chief Circuit Judge

ORDER

ENTERED: JANUARY 27, 2012

Complainant, a pro se litigant, has filed a series of misconduct complaints, alleging violations of the Judicial Conduct and Disability Act, 28 U.S.C. § 351(a), against one district judge and two magistrate judges. These misconduct complaints concern complainant's three federal cases, each of which has evolved out of a state court property dispute.

Complainant filed his first misconduct proceeding (Nos. 01-11-90031 and 01-11-90032) against a magistrate judge and a district judge alleging that they exhibited bias in connection with complainant's primary civil case. Based upon the results of a limited inquiry, conducted under Rule 11(b) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), I dismissed this matter, pursuant to

28 U.S.C. §§ 352(b)(1)(A)(i), 352(b)(1)(A)(ii), and 352(b)(1)(B). See Lynch, C.C.J., Order, In Re: Complaints Nos. 01-11-90031 and 01-11-90032, November 1, 2011.

Complainant did not file a petition for review.

The complainant has since filed two additional misconduct complaints against the same district judge and magistrate judge, and against another magistrate judge who also presided over complainant's cases. See Nos. 01-11-90046, 01-11-90047, 01-11-90048, and 01-11-90051. For the reasons explained below, these misconduct complaints are dismissed.

The majority of complainant's allegations are directed at the magistrate judge who was not a subject of complainant's first misconduct proceeding. These are addressed first.

Complainant alleges that the magistrate judge has exhibited "aggressive and hostile behavior" against complainant that is "premeditated, malicious" and intended to undermine the success of complainant's litigation. Complainant asserts that the magistrate judge was "openly hostile" in a court order that wrongfully "threatened" to dismiss the case if complainant failed to attend his deposition.

Complainant further alleges that this magistrate judge engaged in improper ex parte communication with the defense attorney prior to issuance of the allegedly threatening order. Complainant states that the order issued only 12 minutes after defense counsel had posted a response to complainant's motion for a protective order seeking to forestall his deposition.

Complainant also asserts that the magistrate judge had a conflict of interest because the magistrate judge had been formerly employed by a law firm that complainant had accused of racketeering. Complainant does not say where or when he made these allegations against the firm.

Complainant contends that the magistrate judge violated complainant's civil rights when the court neglected to bring complainant's procedural errors to complainant's attention. Complainant adds that, in violation of federal and local procedural rules, the magistrate judge "aggressively" denied a number of complainant's motions in order to deny complainant the discovery to which he was entitled. The complainant concludes that the magistrate judge's alleged hostility, abusive behavior and improper communications demonstrate that the magistrate judge has a "personal issue" with complainant that necessitates the magistrate judge's disqualification from complainant's proceedings and a change of venue.

As an initial matter, the judicial misconduct complaint procedure, 28 U.S.C. § 351, *et. seq.*, does not provide an avenue for obtaining a judge's disqualification, a change of venue, or other relief in a pending case. See Rules of Judicial-Conduct, Rules 11 and 19.

Moreover, there is no evidence in the reviewed record - including the misconduct complaints, the dockets of complainant's cases, and relevant pleadings and court orders - that the magistrate judge was hostile, biased, or engaged in any other wrongdoing. With

respect to the complainant's motion for a protective order, the magistrate judge issued an order explaining that complainant has a legal obligation to attend his deposition if he intended to pursue his claims, that the deposition had already been rescheduled once, and that it would be limited in time in accordance with the governing rules. This order, like the rest of the reviewed record, contains no evidence of "hostility." The claim to this effect is dismissed as baseless, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules for Judicial-Conduct, Rule 11(c)(1)(C).

There is also no evidence of ex parte communication. The fact that the court ruled on the complainant's motion for a protective order on the same day, and perhaps near the same time, as defense counsel filed a response to complainant's motion is not remotely indicative of improper communication between the judge and the lawyer. Any such inference is groundless. See 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules for Judicial-Conduct, Rule 11(c)(1)(C).

Complainant's allegation of a conflict of interest is frivolous. Complainant provides no information suggesting any contact or other relationship between him and the magistrate judge's former employer, let alone one that would suggest a conflict of interest. Accordingly, this claim is dismissed as baseless, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). See also Rule for Judicial-Conduct, Rules 11(c)(1)(C).

Further, the magistrate judge was under no legal or ethical obligation to provide complainant with legal advice, procedural or otherwise. See 28 U.S.C. § 352(b)(1)(A)(i).

See also Rules for Judicial-Conduct, Rule 11(c)(1)(A). The record demonstrates to the contrary: the magistrate judge in fact repeatedly provided complainant with information concerning discovery procedure.

With respect to the denial of the cited motions, the record reflects that the magistrate judge either denied or struck from the docket a number of complainant's motions for either failing to engage in good faith efforts to resolve discovery disputes, or for reiterating arguments that the court had previously addressed. There is no cognizable claim of misconduct. See 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules for Judicial-Conduct, Rule 11(c)(1)(B).

Accordingly, the allegations against the magistrate judge are dismissed, pursuant to 28 U.S.C. §§ 352(b)(1)(A)(i), 352(b)(1)(A)(ii), and 352(b)(1)(A)(iii). See also Rules for Judicial-Conduct, Rules 11(c)(1)(A), 11(c)(1)(B) and 11(c)(1)(C), respectively.

With regard to the magistrate judge and the district judge who were the subjects of complainant's first misconduct proceeding, Nos. 01-11-90031 and 01-11-90032, the complainant alleges that they collaborated to undermine the success of complainant's litigation. Complainant contends that they knowingly allowed two defendants to introduce evidence he characterizes as "fraudulent" with motions for summary judgment, including false dockets of complainant's state court proceedings.

The complainant further charges that the judge and magistrate judge wrongfully dismissed complainant's first case with prejudice, despite the fact that complainant

intended to add a defendant to the case.

These claims are baseless. The reviewed record contains no evidence that the magistrate judge or the district judge relied on false state court records, much less knowingly used false evidence, or were in any way improperly motivated in reviewing the summary judgment motions. The magistrate judge issued lengthy recommended decisions in response to these motions that painstakingly addressed each of the issues raised by both parties which the district judge affirmed.

There are likewise no facts that the magistrate judge or the district judge were improperly motivated in allowing the defendants' motions to dismiss complainant's initial lawsuit. Accordingly, these claims are dismissed as frivolous, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules for Judicial-Conduct, Rule 11(c)(1)(C). Complainant's disputes with the court's rulings, including the summary judgement rulings in one case and the dismissal of the other do not present a cognizable misconduct complaint. See 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules for Judicial-Conduct, Rule 11(c)(1)(B).

Finally, complainant includes allegations against defense counsel, state and municipal officials, and three case managers. Complainant asserts that one case manager "refused to communicate with [complainant] by email," in violation of complainant's civil rights, and deliberately delayed docketing the complainant's pleadings. The complainant asserts that the case manager's delay in filing a defendant's pleading and entering a court order reflected the case manager's "premeditated plan" to compel complainant to force

complainant to attend his deposition.

The complainant continues that another case manager intentionally required complainant to re-submit an amended complaint in his third case in order to force complainant to miss the deadline for filing the amendment without leave of court. Complainant states that, although he filed the amended complaint in a format that he had previously been told was acceptable, the case manager telephoned complainant the following day and told complainant that this format was not compatible with the court's electronic case filing system. Complainant states that he then had to resubmit it with a motion for leave to amend the complaint.

Finally, complainant alleges that a third case manager intentionally provided complainant with false information and erroneous legal advice in order to assist the magistrate judge in falsifying court documents.

As an initial matter, the judicial misconduct complaint procedure, 28 U.S.C. § 351, *et. seq.*, does not provide an avenue for addressing claims of impropriety by attorneys, public officials or court staff. See Rules for Judicial-Conduct, Rule 4 That said, however, I have looked into the claims against staff and determined that they are without merit.

First, the assertion that court staff intentionally provided complainant with false information in connection with any of his three cases is presented without any basis in fact. There is likewise no evidence that staff misdocketed any pleadings. Further, the

court does not as a regular matter communicate with litigants by email, and staff properly acted in accordance with this procedure. Finally, the court's request that complainant resubmit an amended complaint in a different format is not indicative of wrongdoing. Insofar as staff provided complainant with erroneous information at some point during the litigation - which has not been demonstrated - this is not misconduct.

For the reasons stated, Complaints Nos. 01-11-90046, 01-11-90047, 01-11-90048, and 01-11-90051 are dismissed, pursuant to 28 U.S.C. §§ 352(b)(1)(A)(i), 352(b)(1)(A)(ii), and 352(b)(1)(A)(iii). See also Rules of Judicial-Conduct, Rules 11(c)(1)(A), 11(c)(1)(B), and 11(c)(1)(C).

8 1/27/12

Date

Sander L. Lynch

Chief Judge Lynch